

SENATE BILL NO. 131

INTRODUCED BY BLACK

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE IMPORTATION, SALE, OFFERING FOR SALE, AND DISPENSING OF GASOLINE CONTAINING METHYL TERTIARY BUTYL ETHER IN AMOUNTS THAT EXCEED ALLOWABLE TRACE LEVELS; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE BOARD OF ENVIRONMENTAL REVIEW TO ADOPT RULES ESTABLISHING ALLOWABLE TRACE LEVELS OF METHYL TERTIARY BUTYL ETHER AND ESTABLISHING REPORTING AND SAMPLING REQUIREMENTS; AUTHORIZING ADMINISTRATIVE PENALTIES AND INJUNCTIONS; AMENDING SECTIONS 82-15-102, 82-15-104, 82-15-106, 82-15-110, AND 82-15-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-15-102, MCA, is amended to read:

"82-15-102. Enforcement of part -- rules. ~~(1) This~~ Except as provided in subsection (2), this part shall ~~must~~ be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this part, and those rules have the effect of law.

(2) Section 82-15-110(8) must be enforced by the department of environmental quality.

(3) The board of environmental review shall adopt rules for the regulation of methyl tertiary butyl ether in accordance with this part. The rules must establish:

(a) a trace level or trace levels of methyl tertiary butyl ether that may be contained in gasoline that is imported into the state, stored, distributed, sold, offered or exposed for sale, or dispensed IN THE STATE OF MONTANA. The board shall establish trace levels in a manner that prevents the intentional addition of methyl tertiary butyl ether to gasoline but that allows for a residual amount of methyl tertiary butyl ether to remain in tanks following implementation of 82-15-110(8).

(b) reasonable sampling and reporting requirements; and

(c) requirements that the board determines are reasonable and necessary for implementation of the portions of this part that apply to methyl tertiary butyl ether."

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2 **Section 2.** Section 82-15-104, MCA, is amended to read:

3 **"82-15-104. ~~Department~~ Departments authorized to employ laboratory for testing.** The department
4 and, when testing for methyl tertiary butyl ether, the department of environmental quality may employ a
5 laboratory ~~having~~ that has sufficient facilities to make tests of petroleum products as required and may pay
6 reasonable compensation for the analyses and tests made by it the laboratory."

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8 **Section 3.** Section 82-15-106, MCA, is amended to read:

9 **"82-15-106. Refusing, suspending, and revoking licenses -- hearing required.** The department may
10 refuse to grant a license or may suspend or revoke a license already granted for due cause after a hearing
11 ~~noticed~~ for which notice was provided for not less than 10 days. Violation of any provision of this part, except
12 82-15-110(8), or any lawful order or rule of the department is cause for which the department may suspend,
13 revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on ~~those~~ terms
14 ~~which~~ that the department considers ~~just and proper~~ appropriate."

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16 **Section 4.** Section 82-15-110, MCA, is amended to read:

17 **"82-15-110. Unlawful acts.** It is unlawful to:

18 (1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the ~~same~~
19 meter or device has been approved by the department and sealed as correct;

20 (2) change or in any way tamper with the department's seal without written consent from the
21 department;

22 (3) make ~~hose~~ delivery from petroleum vehicle tanks through a hose unless the tanks have been
23 calibrated by the department under 82-15-108;

24 (4) sell or deliver liquefied petroleum to a consumer as a liquid or vapor except as provided by
25 82-15-109;

26 (5) sell or offer for sale or deliver liquefied petroleum to a consumer as a liquid or vapor, the
27 measurement of which has not been temperature corrected to 60 degrees F by means of an automatic
28 compensating device ~~which~~ that has been approved, calibrated, and sealed by the department, unless otherwise
29 provided by the department;

30 (6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications

1 have been set by the department unless the commodities in all respects meet the tests and standards
2 prescribed;

3 (7) sell; or offer; or expose for sale any petroleum product ~~which~~ that is adulterated, mislabeled, or
4 misrepresented with respect to the use for which it is reasonably intended; or

5 (8) import into the state, store, distribute, sell, offer or expose for sale, or dispense any gasoline that
6 contains methyl tertiary butyl ether in amounts that exceed the trace level or levels allowed by the rules adopted
7 pursuant to 82-15-102(3)(a)."

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9 **Section 5.** Section 82-15-111, MCA, is amended to read:

10 **"82-15-111. Penalty for violations.** A person who purposely, knowingly, or negligently violates any of
11 the provisions of this part, except 82-15-110(8), or any rule promulgated by the department is guilty of a
12 misdemeanor and upon conviction shall for the first offense be punished by a fine of not less than \$10 or more
13 than \$1,000 and shall be punished for any subsequent offense by a fine of not less than \$50 or more than
14 \$5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment."

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16 **NEW SECTION. Section 6. Department of environmental quality to enforce prohibition on methyl**
17 **tertiary butyl ether -- notice requirements -- hearing -- penalties.** (1) (a) Whenever the department of
18 environmental quality believes that a violation of 82-15-110(8) or of the rules adopted pursuant to 82-15-102(3)
19 has occurred, it may serve written notice of the violation on the alleged violator or agent of the alleged violator.

20 (b) The notice must specify the facts alleged to constitute a violation and may include an order
21 assessing an administrative penalty pursuant to subsection (3), an order to take necessary corrective action
22 within a reasonable period of time stated in the order, or both.

23 (c) The order becomes final unless, within 30 days after the notice is served, the person named
24 requests in writing a hearing before the board of environmental review. Service by mail is complete on the date
25 of mailing.

26 (d) Upon receipt of the request, the board of environmental review shall schedule a hearing. The
27 contested case provisions of the Montana Administrative Procedure Act provided in Title 2, chapter 4, part 6,
28 apply to a hearing conducted under this section.

29 (2) If, after a hearing held under subsection (1), the board of environmental review finds that a violation
30 has occurred, it shall either affirm or modify the department of environmental quality's order. An order issued

1 by the department of environmental quality or by the board of environmental review may prescribe the date by
2 which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board of
3 environmental review finds no violation has occurred, it shall rescind the department of environmental quality's
4 order.

5 (3) A violation of 82-15-110(8) or of a rule adopted pursuant to 82-15-102(3) is subject to an
6 administrative penalty of up to \$1,000. Each day of violation constitutes a separate violation.

7 (4) Any person who violates 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or an order issued
8 under this section is subject to a civil penalty not to exceed \$5,000 for each violation. Each day of violation
9 constitutes a separate violation.

10 (5) The department of environmental quality is authorized to commence a civil action seeking
11 appropriate relief, including temporary and permanent injunctions and penalties under subsection (4) of this
12 section, for a violation of 82-15-110(8), a rule adopted pursuant to 82-15-102(3), or a violation of an order issued
13 under this section. The action must be brought in the district court of the first judicial district, Lewis and Clark
14 County, or in the district court of the county in which the violation occurred.

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16 NEW SECTION. **Section 7. Codification instruction.** [Section 6] is intended to be codified as an
17 integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [section 6].

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19 NEW SECTION. **Section 8. Effective date.** [This act] is effective January 1, 2006.

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